

**SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

BILL NUMBER:

A-400

DATE OF INTRODUCTION:

January 8, 2002

SPONSOR:

Assemblyman Kean, Jr.

DATE OF RECOMMENDATION:

March 26, 2002

IDENTICAL BILL:

COMMITTEE:

Assembly State Government Committee

DESCRIPTION:

This bill would provide for a sales and use tax exemption for purchases of goods donated to governmental, religious, educational, charitable, and public safety organizations.

ANALYSIS:

This bill provides a sales tax exemption for purchases of goods donated to governmental and certain charitable and public safety organizations. It also applies to corporations who make donations from their inventory.

There is no good reason for this legislation since there are already less burdensome ways to encourage charitable giving within the State. Providing this type of exemption would allow donors to receive a double benefit since charitable donations can be deducted from both Gross Income Tax and Corporate Business Tax. Many organizations are classified as "exempt" and qualify to make purchases tax-free. It is unclear why a donor would purchase the property and then donate it to an exempt organization. The sales tax could be avoided entirely if the donor gave cash to the exempt entity. The exempt organization could then purchase the property without paying sales tax. The only possible benefit this bill could provide would be in situations where a specific or unique item is being donated. But even in that circumstance the donor could benefit from the charitable deductions referenced above.

This bill, as proposed, would be impossible to administer. There is no stated time frame for when a donation must be made relative to the purchase of the property, in order to qualify for the exemption. From an auditing and compliance standpoint, it may difficult at times, for the Division of Taxation to ascertain whether the taxpayer used a purchase

prior to donating it to the organization, even though such use would technically disqualify the purchase from eligibility for exemption. Similarly, at the time of purchase, it may be difficult to prove to the vendor that the taxpayer intends to donate the item and that the donee organization is qualified. The Division of Taxation would be required to draft new regulations and to adopt new rules in order to implement the administrative procedures that would be required to accommodate this bill. The proposed legislation simply provides new avenues for misuse, abuse and fraud.

If an exemption for property purchased for donation is enacted, there may later be initiatives to extend the exemption to meals, services and other taxable purchases when those are purchased for donation to qualifying organizations. Also, the bill's definition of a qualified organization omits federal agencies, the United Nations and similar international organizations, which are exempt organizations under section 9(a)(2)-(3) of the Sales and Use Tax Act. The omission of these section 9 organizations creates inequitable treatment favoring certain nonprofit organizations over others that provide important services for the common good.

RECOMMENDATION: The Commission does not recommend enactment of this Bill.

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 6

COMMISSION MEMBERS ABSTAINING: 0

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